Statement given to Mr. Russ Blandford,
Chief Counsel, House Armed Services
Committee, on 15 September 1967.

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MEMORANDUM

SUBJECT: S. 1035

S. 1035 passed the Senate on 13 September after 3 1/2 hours of debate. The vote was 79 yeas and 4 nays. The 4 nays were Senators Russell, Stennis, Eastland and Hollings. It is interesting to note that Senator Eastland is Chairman of the Judiciary Committee which reported out the bill. Five Senators--Stennis, Milton Young, Margaret Chase Smith, Bayh and Jackson--expressed the view that CIA and NSA should have a complete exemption from the bill. Senator Stennis stated that he was authorized to speak for Senator Russell to the effect that Senator Russell thought CIA should have a complete exemption. No such amendment was offered, however, since it appeared that those concerned had not had sufficient time to ascertain if they would be successful and they did not wish to put it to a vote if there was a risk of losing.

Senator Smith and Senator Stennis, during the floor debate, stated in effect that it was hoped the House would resolve the problem in the committee or a subsequent House-Senate conference.

There were two floor amendments. Senator Ervin proposed an amendment to Section 6 which, in the bill as reported, authorized the Directors of CIA and NSA to ask questions during polygraph and psychological tests eliciting information concerning personal relationships, concerning religious beliefs or concerning the attitude or conduct with respect to sex matters or on personal finances, if the Director of those agencies made a personal finding with regard to each individual that such information was required to protect the national security. It was pointed out that this would be an impossible administrative burden on those Directors. Therefore, Senator Ervin offered an amendment that the Director or his designee could make such findings. Senator Milton Young then offered an amendment which would delete the complete exemption of the FBI from the bill and would place the FBI in the partial exemption granted NSA and CIA in Section 6.

There remain a number of other objectionable features:

a. Section 1(k) authorizes an employee to have counsel at the inception of an interrogation which could lead to disciplinary action. This is simply impossible when a supervisor would wish to ask a clerk why he had been late for three days or the circumstances surrounding leaving a safe open. Even more serious would be questioning of a case officer concerning his handling of a delicate agent operation.

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b. Section 1(b) prohibits taking notice of attendance at outside meetings. Under its wording, the Agency would be prohibited from taking any note of attendance at subversive organization meetings or other types of meetings which by their nature bring notoriety to the participants.

c. Section 1(d) makes it unlawful to require an employee to report on his activities and undertakings not related to the performance of his duty. In sensitive agencies, it is a long established practice that employees must obtain approval before making speeches or writing for publication. Also, it would impinge on the question of association by employees of the Agency with intelligence officials of a foreign government.

The other sections dealing with such matters as making it improper to coerce people to buy bonds or to make political contributions are no real problems in and of themselves. However, Section 5 creates an independent Board of Employees' Rights to which an employee or applicant can appeal if he feels his rights have been aggrieved. That Board is authorized to examine into the matter, call witnesses and has the power, if it finds a violation, to suspend or even to terminate the employment of the Agency official it finds in violation, all such action without regard for any views of the department or agency head. It may well be that for security reasons this Agency or other sensitive agencies could not put all of the facts in the record which would have justified the action of the accused Agency official.

In addition to this Board mechanism, an employee or applicant has the right to appeal the decision of the Board to the district court or at his option he may go directly to the Federal district court and the party defendent is the accused official. It is easy to say that the courts would properly decide the case, but experience has shown that almost every court action involving CIA, however ill-founded, costs something in security revelation of names, procedures, and other classified matters. These rights to a Board hearing or court suit furnishes an invaluable weapon to those who would wish to damage or destroy CIA. Consider what the KGB could do by encouraging obviously unqualified applicants to flood the recruiting channels and then institute court suits all over the country.

In summary, this bill makes it more difficult for the Agency to screen out Communist oriented individuals or others of unsuitable character and would make it more difficult to remove or to separate unsuitable persons. The bill also has the potential for serious injury to the security of the activities of the Agency.

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Senator Smith and Senator Stennis, during the floor debate, stated in effect that it was hoped the House would resolve the problem in Committee or a subsequent House-Senate conference.

Section 6 authorizes questions during polygraph and psychological tests designed to elicit information concerning personal relationships, concerning religious beliefs or concerning the attitude or conduct with respect to sex matters or on personal finances, if the Director of the FBI, CIA or NSA, or their designees, make a personal finding with regard to each individual that such information is required to protect the national security. No other department may ask such questions under any circumstances.

Section 1(k) authorizes an employee to have counsel or other person of his choice present during an interrogation which could lead to disciplinary action. This is simply impossible when a supervisor would wish to ask a clerk why he had been late for three days or the circumstances surrounding leaving a safe open. Even more serious would be questioning of an intelligence officer concerning his handling of a sensitive operation.

Section 1(b) prohibits taking notice of attendance at outside meetings. Under its wording, an agency would be prohibited from taking any note of attendance at subversive organization meetings or other types of meetings which, by their nature, bring notoriety to the participants.

Section 1(d) makes it unlawful to require an employee to report on his activities and undertakings not related to the performance of his duty. In sensitive agencies, it is a long established practice that employees must obtain approval before making speeches or writing for publication. Also, it would impinge on the question of association by employees of an agency with intelligence officials of a foreign government.

The other sections dealing with such matters as making it improper to coerce people to buy bonds or to make political contributions are no real problems in and of themselves. However, Section 5 creates an independent Board of Employees' Rights to which a civilian employee or applicant can appeal if he feels his rights have been aggrieved, by a Government official who then becomes the party defendant. Under the bill, a commissioned officer or any member of the Armed Forces acting under his authority may be made a party defendant. That Board is authorized to examine into the matter, call witnesses and has the power, if it finds a violation, to suspend or even to terminate the employment of a civilian official it finds in violation, all such action without regard for differing views of the department or agency head. It may well be that, for security reasons, CIA or other sensitive agencies could not put all of the facts in the record which would have justified the action of the accused official.

In addition to this Board mechanism, a civilian employee or applicant has the right to appeal the decision of the Board to the district court or, at his option, he may go directly to the Federal district court. One can assume the court would properly decide the case, but experience has shown that almost every court action involving CIA, however ill-founded, results in security revelation of names, procedures, and other classified matters. These rights to a Board hearing or court suit furnishes an invaluable weapon to those who would wish to damage or destroy CIA. Consider what the KGB could do by encouraging obviously unqualified applicants to flood the recruiting channels and then institute court suits all over the country.

In summary, this bill makes it more difficult for the sensitive agencies to screen out Communist-oriented individuals or others of unsuitable character and would make it more difficult to remove or to separate unsuitable persons. The bill creates a potential for serious security injury to the sensitive agencies in Government.